

NATURAL RESOURCES ADVISORY COUNCIL MEETING

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Indianapolis, Indiana

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August 15, 2007
10:30 A.M., EDT (9:30 A.M., CDT)

A G E N D A

1. Call to Order by Chairman, Patrick J. Early
2. Approval of Minutes of March 13, 2007 Meeting, April 10, 2007 Meeting, and June 13, 2007 Meeting
3. Consideration of a rule proposal to extend the dog running season for raccoons and opossums to start at noon on January 31 and extend through November 7 of each year, adding an additional 40 nights to the current season; Administrative Cause Number 07-164D
4. Discussion of possible approaches to a simple group pier rule and a rule to more clearly distinguish group piers and marinas
5. Adjournment

On-Site Inspections of Projects or Programs of the DNR and NRC

Following the meeting, the Natural Resources Advisory Council members will tour the Department of Natural Resources facilities at the Indiana State Fair.

NATURAL RESOURCES ADVISORY COUNCIL
***DRAFT* Minutes of the March 13, 2007 Meeting**

Members Present

Patrick Early, Chair
Amy Travis, Vice Chair
William Wert
Bill Pippenger
Donald Van Meter
Jim Tractman
Tom Rethlake

Department of Natural Resources Staff

Robert Carter	Executive Office
Ron McAhron	Executive Office
John Davis	Executive Office
Burgess Brown	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Human Resources
Sam Purvis	Law Enforcement
Phil Marshall	Entomology and Plant Pathology
Glen Salmon	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Mark Reiter	Fish and Wildlife
John Bacone	Nature Preserves
Emily Kress	Outdoor Recreation
Carman Jackson	Outdoor Recreation
Terri Price	Water
Kathleen McLary	Indiana State Museum and Historic Sites
Haley Tallman	Indiana State Museum and Historic Sites

Natural Resources Commission Staff

Stephen Lucas	Sandra Jensen
Jennifer Kane	Debbie Michaels

Guests

Dick Mercier	Bryan Poynter
Jack Corpuz	Jane Ann Stautz
Sam Bond	Larry Klein
Richard Mangus	Thomas Easterly

Patrick Early, Chair, called the meeting to order at 10:35 a.m., EST in the Multipurpose Room, at the Indiana State Museum, 650 West Washington Street, Indianapolis, Indiana. With the presence of seven members, the Chair observed a quorum. Donald Van Meter moved to approve the minutes of December 13, 2006. William Wert seconded the motion. Upon a voice vote, the motion carried.

Discussion by Advisory Council Chairman Early, Commission Chairman Poynter and Director Carter of Relationship between the Advisory Council and the Natural Resources Commission

Chair Early noted that Robert Carter, Jr., Department Director, and Bryan Poynter, Commission Chair, along with other Commission members and guests, were present at today's meeting. Chair Early indicated that he and Vice Chair Travis, and other Council members have "wrestled with what is exactly" the Advisory Council's "role and authority, and what purpose do we play in the inter-workings of the DNR." Chair Early requested input from Council members and Commission members.

Chair Early noted that the proposed "one buck rule" was the first issue presented to the Advisory Council. "We listened to testimony, and then we got to a point where it may have been appropriate to take some sort of action in making a recommendation". Chair Early indicated, however, that under the previous Department directorship, the Advisory Council was informed that the Council's role was "not to make affirmative recommendations, to take votes, and so on." He said, "It appears that the statute does not only allow that, but really that's part of the purpose of us being here."

Chair Early asked whether Robert Carter had "any thoughts" regarding the Advisory Councils' role. Carter indicated that he agreed with the Chair's interpretation. "I agree with what you just said. I think that is your role, and that's what I want to use [the Advisory Council] for is to bounce ideas off of and move things forward to the Commission. I think the Commission would appreciate that, too." Carter said the Advisory Council would be a "starting point" for many Department issues. He also said the Advisory Council should be used to its "fullest extent", and it could be "very beneficial" to the Commission and the Department.

Commission Chair Bryan Poynter said, "I couldn't agree more. I know we are all anxious to develop some form of working document, or policy, or some working protocol such that it can be efficient between the Department, the Council, and the Commission" resulting in "not much ambiguity" as to the Council's role. "I want the process to work well" for the Department, the Commission, and "ultimately to better serve the constituent groups".

At the Chair's request, Stephen Lucas, Director of the Natural Resources Commission, Division of Hearings, provided a brief explanation of the rule adoption process.

Donald Van Meter, Council member, said, “As an ‘advisory’ council, that’s exactly what we do is to provide opinions either to the Commission, especially the Commission, or perhaps to the Department, and they are, indeed, opinions and advice”. He said advice could be given to the Commission “from a different set of people with different perspectives...whether you take it or not it’s another point of view”.

The Chair characterized the Council’s role under the previous directorship as a “listening” council. He noted that the emerald ash borer issue presented at the Council’s previous meeting was “fascinating, but you could have watched it on the Discovery Channel.” He added, “I just want all of us to feel like this is worth our time.”

Vice Chair, Amy Travis, indicated that she had reviewed the Advisory Council’s governing statutes, and she considered each of the Governor’s appointments to the Council and the differing manner in which each appointee uses the Department. She characterized the Council as “a collection of people with very different” educational and life experiences. The Vice Chair said, “I think that either the Commission, the Director, or somebody within the Department should give [the Council] something to study or an idea they are interested in developing further; that we are to listen to scientific opinion, both state supported and independent scientific opinion when appropriate; that we are to listen to public opinion from various stakeholder groups, which I would say would include anything from hunting groups to interest groups be they environmental interest groups. Then use our combined experience to give an advisory opinion back to the Commission or the Director. I see our role as being an independent opinion and not being told, ‘well, we want you to come to this conclusion.’”.

Vice Chair Travis noted that the issues the Department faces are “so huge”. She noted that there may be certain natural resource issues where the Council may be able to assist and “direct” the Department. Chair Early agreed, and he added, “We don’t want to become more bureaucracy, cumbersome, and more administration. That is not meaningful for anybody.”

Tom Rethlake, Council member, asked, “Do the same people that testify in front of [the Council] duplicate their presentation to the Commission?” Commission Chair Poynter noted that Department staff members may be present at the Commission meetings to answer questions. “The staff does a wonderful job—in a very nice package—briefing and summarizing very complicated issues, but not from the standpoint that I read in the [Council] minutes regarding the emerald ash borer presentation, for example, not to that level”.

The Vice Chair said that she sees a “decrease in bureaucracy. I see the Director giving us something to study...and we look into it and give an opinion...saving [the Department] a bunch of time and energy because it’s kind of condensed”.

Commission Chair Poynter said, “We have a valuable resource in this Council. I want to make sure that it is utilized and the agenda is populated far enough in advance so that the

Commission, and ultimately the Department, can provide the services to constituent groups that are needed.”

William Wert, Council member, said “I always felt that we were a venue sometimes for the public to begin a process and then moving forward. We would get a distillation of facts and take testimony, and would then make our recommendation, which I always thought carried some weight”. He noted that the Council may be “narrowing” administration, time, and consumption of resources in some instances.

Bill Pippenger, Council member, noted that “years ago” the previous councils assisted in writing the conservancy district nonrule policy document. “It was a really tough, long-term project.... It was a good thing to do, and it needed to be done.” He said the resulting document “helped simplify the conservancy process.”

Van Meter noted that the Council also assisted with the formation of the State’s drought plan. “As the Department was writing [the plan], the Department would often use the Advisory Council for some feedback. I think that was a very productive use of our time.” He said that since the Advisory Council participated in the formation of the drought plan, the Commission “did not have to start from ground one.”

John Davis, Deputy Director of the Bureau of Lands, Recreation, and Cultural Resources added that the issue of “running dogs” on fish and wildlife areas was also presented to the Advisory Councils. “We ended up not taking that to the Commission, because the Advisory Council continued to ask us questions that we were not answering very well.” Van Meter added, “But we didn’t make that decision. You made that decision, but we provided some thoughts so that [the Department] could make a more intelligent decision.”

Chairman Early noted that the discussions have provided “more direction” regarding the Council’s role.

Jim Trachtman, Council member, said that “being an advisory body is the correct place to be.” He noted that the present Council is a “blending” of the two previous councils. Trachtman said the previous councils had reviewed Department fees along with rates for the state park inns. “I thought those were fascinating...I thought we gave some very good advice there”. He said that as Department issues arise the Council “can be the eyes and ears, and be a place for the public to come. We can spend the time and listen to them, and come up with some opinions and advice.”

Commission Chair Poynter invited other Commission members to offer comment.

Jane Ann Stautz, Commission Vice Chair, indicated that she has served on the Commission for “several years,” and also serves as the Chair of the Commission’s AOPA (Administrative Orders and Procedures Act) Committee. “There are some matters that [the Committee] is seeing more and more of after going through the administrative process with regard to the use of our freshwater lakes”. She noted that there “are some

rules that probably could use examination and probably further definition... ‘group piers’ versus ‘marinas’”. Stautz said the Advisory Council could “look at what are the implications of some of the terms or application of those to help provide guidance to the Department”. She said the Council could review other neighboring states’ policies “to get ideas and bring that together with advice and recommendations”. She also said “balance of the use” of state parks may be an issue for Council review. Stautz said Department issues could be “fine tuned a little further” by the Council prior to Commission consideration. “I think that would be very helpful.”

Larry Klein, Commission member, reflected that historically with advisory councils and commissions there is a problem of “redundancy of character and the need to discern the difference in the duties of the two bodies”. He noted that the Commission has statutorily prescribed functions and “those functions can’t really be assigned to some other group...the desire to always be active can create more work just in the attempt to be active”. Klein noted that he was “new to the Commission, but not new to the dilemma.” He said, “We need to avoid the pitfall of redundancy.”

Commission Chair Poynter asked Commission member Thomas Easterly whether the Indiana Department of Environmental Management (IDEM) has an advisory council or group. Easterly explained that IDEM has boards that review governing rules. He said IDEM boards have “up or down voting, not just advice, so the board does not have to agree with me” as IDEM Commissioner.

Commission Chair Poynter asked for the perspective of Jack Corpuz, a representative of a variety of sportsmen’s groups. Corpuz noted that there was a move a few years ago to dissolve councils, and the sportsmen’s groups “fought to keep the Council—at least as merged.... We look at the Council as a sounding board for particular issues.” He indicated that issues that are “somewhat controversial” should be presented to the Council prior to Commission consideration. “It does kind of lengthen the process. It does kind of duplicate some of the work, but on those issues that are controversial like that I think you need to be pretty darn sure what kind of decision you are going to make. The more help you get the better off you’ll be.” Corpuz noted that Council members “deserve to have the opportunity to vote and make their feelings known to the Commission.”

Next Meeting of the Natural Resources Advisory Council

The next meeting of the Natural Resources Advisory Council is April 10, 2007 to begin at 10:30 a.m., EDT (9:30 a.m., CDT) in the Board Room, Indiana State Museum, 650 West Washington Street, Indianapolis, Indiana.

NATURAL RESOURCES ADVISORY COUNCIL
***DRAFT* Minutes of the April 10, 2007 Meeting**

Members Present

AmyMarie Travis, Vice Chair
William Wert
Bill Pippenger
Donald Van Meter
David Lupke

Department of Natural Resources Staff

Ron McAhron	Executive Office
John Davis	Executive Office
Cheryl Hampton	Human Resources
Lt. Col. Sam Purvis	Law Enforcement
Ann Knotek	Legal

Natural Resources Commission Staff

Stephen Lucas
Jennifer Kane

AmyMarie Travis, Vice-Chair, opened the discussions at 10:34 a.m., EDT in the Board Room at the Indiana State Museum, 650 West Washington Street, Indianapolis, Indiana. In the absence of a quorum, she observed that official action could not be taken, but there could be informal discussions of agenda items.

Scheduling of 2007 Meeting Dates and Locations

Bill Pippenger observed that the members had previously expressed a preference for holding meetings on Wednesdays, but the proposed dates were Tuesdays. He said he had scheduling conflicts on Tuesdays and wondered whether the dates could be reset for Wednesdays. Donald Van Meter also indicated the Wednesday date would be preferable for him for the June meeting. Those in attendance asked John Davis to discuss with Chairman Early the possibility of resetting each of the proposed dates on Tuesdays for one day later on Wednesdays.

Don Van Meter said he conceptually liked the idea of holding the August meeting in conjunction with the Indiana State Fair but wondered whether there was a suitable facility on the Fair Grounds. The Vice Chair observed that the Open Door Law would prohibit requiring an entrance fee, so, if the meeting were to be held on the grounds, a provision would need to be implemented to allow public attendance without paying an entry fee. The Advisory Council members asked John Davis to determine whether a suitable location could be obtained that would conveniently allow for a tour within the Fair Grounds but that was itself outside the gates.

Report from Bureau of Water and Mineral Resources

Ron McAhron reported that, if enacted as currently drafted, Indiana House Bill 1738 would establish new responsibilities for the Advisory Council. He suggested consideration of the legislation might become an appropriate topic for the June meeting.

Consideration of Tendered Project Regarding Riparian Zones in Public Waters (Administrative Cause No. 07-045A)

Steve Lucas, Director of the NRC's Division of Hearings, opened an informal discussion of this subject. Included were discussions of what constitute a "navigable" waterway and a "public freshwater lake". He said for consideration was a project to help identify how riparian zones would be delineated within a navigable waterway or a public freshwater lake. This delineation was distinguished from how the delineation would be performed on a private waterway. Lucas said the Advisory Council was being asked to choose among five options:

- (1) Continue exclusively with the current approach of developing precedents through the Indiana Appeals Court and Supreme Court and the NRC's administrative law judges and its AOPA Committee (published in "Caddnar").
- (2) Develop a "nonrule policy document" to synthesize and conceptualize the precedents developed under option (1), with the possible inclusion of principles used by licensed surveyors.
- (3) Develop rules to direct the application of principles pertaining to the delineation of riparian zones.
- (4) Recommend legislation to direct the application of principles pertaining to the delineation of riparian zones.
- (5) Some combination of options (1) through (4).

David Lupke asked what would be the legal effect of a "nonrule policy document". Lucas responded that it would be advisory and would not have the force and effect of law. A "nonrule policy document" could, however, synthesize the precedents and offer them in a manner that was better organized than individual precedents. A new rule or a new statute would have the force and effect of law. AmyMarie Travis said a "nonrule policy document" would be similar to a learned treatise. It could provide support for the agency decision makers and the public in determining riparian boundaries.

Ann Knotek of the DNR's Office of Legal Counsel directed the attention of the Advisory Council to IC 14-26-2-23, a copy of which is attached to these Minutes as an Appendix. She said this statutory section was at the core of DNR's regulatory responsibilities for the placement of piers and similar structures. These structures are often what are at issue in a delineation of riparian zones. She said this section received major amendments in 2006

to clarify and augment the agency's authority. In particular, Knotek identified subsection (e)(2):

(e) The commission shall adopt rules under IC 4-22-2 to do the following:

....

(2) Provide objective standards for issuing permits under this section, including standards for the configuration of piers, boat stations, platforms, and similar structures. The standards:

(A) may provide for a common use if the standard is needed to accommodate the interests of landowners having property rights abutting the lake or rights to access the lake; and

(B) shall exempt any class of activities from licensing, including temporary structures, if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in [IC 14-26-2-5].

Knotek wondered if the Advisory Council should recommend action to the Natural Resources Commission to implement this expanded statutory responsibility.

Don Van Meter indicated he was comfortable with moving forward to develop a nonrule policy document or a rule to address the delineation of riparian zones. The members asked Lt. Col. Samuel Purvis whether the Division of Law Enforcement would prefer a rule or a nonrule policy document. Purvis responded that having experience with a nonrule policy document was a good approach because it would allow the agency to better understand how a process would work. After gaining the experience, a determination could be made to adopt a rule for all or portions of the document. Bill Pippenger said he supported Purvis's view.

David Lupke observed that riparian rights disputes, particularly as to pier placements, were a growing issue in northeastern Indiana. He suggested that the obvious places for development along major public freshwater lakes, such as Lake James in Steuben County, had been largely filled. Developers were now in the position of seeking to develop wetlands or to use creative approaches, such as developing condominiums landward of the shoreline with access to a lake through some funneling mechanism.

William Wert asked whether there have been determinations about the capacity of a lake to handle increasing boating pressure. Can the number of boats become so large that enjoyment is impeded, and a lake suffers environmental damage?

John Davis said Wert's question pointed to another public waters issue that the DNR expects to bring to the Advisory Council. Carrying capacity for a navigable waterway, Sugar Creek in western Indiana, is a challenge that needs to be addressed.

Lt. Col. Purvis said the agency was examining carrying capacity within lakes. He said other Great Lakes states have sought to address the issue, but responses have typically been site specific and subjective. Also, the challenge is not just boats. He said the Division of Fish and Wildlife is concerned with the adverse environmental impact that can result from shadows thrown by an excessive number of piers.

John Davis asked Lucas whether he and DNR staff could develop a draft nonrule policy document to address riparian zones and tender the draft for review by the Advisory Council. Lucas responded that he could or would welcome a more active participation by the Advisory Council in developing the document if those were the wishes of the members.

Van Meter said this topic presented a lot of interesting issues. He observed that the backup materials showed there were decisions that could form the basis for a meaningful document.

Lupke said the subject provided for a fascinating discussion and a topic of great importance to his portion of the state. Pippenger noted there were also many related issues pertaining to the growing challenges posed for the protection of Indiana's public freshwater lakes.

Vice Chair Travis emphasized the commitment made to keep meetings on schedule. She said the five members of the Advisory Council had participated in an excellent discussion of this issue and in an appropriate consideration of the options. The hour had arrived for the meeting to close, but she suggested that a good foundation was achieved for seeking input by a quorum as to how best to proceed.

Adjournment

At approximately 12:02 p.m., the meeting adjourned.

Next Meeting of the Natural Resources Advisory Council

The next meeting of the Natural Resources Advisory Council will likely be in Indianapolis on June 12 or June 13, 2007.

Appendix IC 14-26-2-23

Sec. 23. (a) Unless a person obtains a permit from the department under this section and conducts the activities according to the terms of the permit, a person may not conduct the following activities:

(1) Over, along, or lakeward of the shoreline or waterline of a public freshwater lake:

(A) excavate;

(B) place fill; or

(C) place, modify, or repair a temporary or permanent structure.

(2) Construct a wall whose lowest point would be:

(A) below the elevation of the shoreline or waterline; and

(B) within ten (10) feet landward of the shoreline or waterline, as measured perpendicularly from the shoreline or waterline;
of a public freshwater lake.

(3) Change the water level, area, or depth of a public freshwater lake or the location of the shoreline or waterline.

(b) An application for a permit for an activity described in subsection (a) must be accompanied by the

following:

(1) A nonrefundable fee of one hundred dollars (\$100).

(2) A project plan that provides the department with sufficient information concerning the proposed excavation, fill, temporary structure, or permanent structure.

(3) A written acknowledgment from the landowner that any additional water area created under the project plan is part of the lake and is dedicated to the general public use with the public rights described in section 5 of this chapter.

(c) The department may issue a permit after investigating the merits of the application. In determining the merits of the application, the department may consider any factor, including cumulative effects of the proposed activity upon the following:

(1) The shoreline, waterline, or bed of the lake.

(2) The fish, wildlife, or botanical resources.

(3) The public rights described in section 5 of this chapter.

(4) The management of watercraft operations under IC 14-15.

(5) The interests of a landowner having property rights abutting the lake or rights to access the lake.

(d) A contractor or agent of the landowner who engages in an activity described in subsection (a)(1), (a)(2), or (a)(3) must comply with the terms of a permit issued under this section.

(e) The commission shall adopt rules under IC 4-22-2 to do the following:

(1) Assist in the administration of this chapter.

(2) Provide objective standards for issuing permits under this section, including standards for the configuration of piers, boat stations, platforms, and similar structures. The standards:

(A) may provide for a common use if the standard is needed to accommodate the interests of landowners having property rights abutting the lake or rights to access the lake; and

(B) shall exempt any class of activities from licensing, including temporary structures, if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in section 5 of this chapter.

(3) Establish a process under IC 4-21.5 for the mediation of disputes among persons with competing interests or between a person and the department. A rule adopted under this subsection must provide that:

(A) if good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute; and

(B) a person affected by the determination of the department may seek administrative review by the commission.

NATURAL RESOURCES ADVISORY COUNCIL
***Draft* Minutes of the June 13, 2007**

MEMBERS PRESENT

Patrick Early, Chair
William Pippenger
Donald Van Meter
William Wert
John Bassemeir
David Lupke

DEPARTMENT OF NATURAL RESOURCES STAFF

Ron McAhrn	Executive Office
Jim Hebenstreit	Water
Mark Basch	Water
Monique Riggs	Water
Mike Crider	Law Enforcement
Samuel Purvis	Law Enforcement
Laura Minzes	Indiana State Museum and Historic Sites

NATURAL RESOURCES COMMISSION STAFF

Stephen Lucas
Jennifer Kane

Call to Order

Patrick Early, Chair, called the meeting to order at 10:43 a.m., EDT in the Park Office, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. In the absence of a quorum, he observed that official action could not be taken, but there could be informal discussions of agenda items.

Chairman's Report

The Chair noted that two new persons were appointed to the Advisory Council to complete its twelve-person membership. He reflected these appointments "will help us a little bit with our quorum issues hopefully."

The Chair reported that the Natural Resources Commission met in May at Clifty Falls State Park. He said the "biggest item of note" was the final adoption of a rule package that, among other amendments, allowed the use of pistol cartridges of certain caliber to be used in rifles.

Consideration of proposed rule for water withdrawal contracts from reservoirs under P.L. 231-2007 and IC 14-25-2; Administrative Cause No. 07-100W

Jim Hebenstreit, Assistant Director of the Division of Water, presented this item. He reported the most-recent session of the Indiana General Assembly enacted P.L. 231-2007, codified as amendments to IC 14-25-2, which affects the sale of water from state-owned water supply storage. Hebenstreit provided background of the Division of Water's Sale of Water Program. "What many of you may not know is that the Division of Water and the Department of Natural Resources, and the State of Indiana are in the water supply business." The U.S. Army Corps of Engineers had a program in Indiana and other states during the 1950s through the 1970s to build flood control reservoirs. "At some point in the 1950s, someone recognized that it might be possible to add in a water supply component into those flood control reservoirs." Indiana invested additional funds in Brookville, Monroe and Patoka Lakes to create water supply storage, and the DNR has the ability to sell water from these three reservoirs. Versailles Lake, Brush Creek Reservoir, and Hardy Lake are totally state owned, and they are also reservoirs from which the DNR may sell water. "In effect, Monroe, Brookville and Patoka were created for flood control, but the state then paid the additional cost of creating a larger impoundment, which would also accommodate a certain amount of water supply storage."

Hebenstreit said that IC 14-25-2 sets the legal structure for Indiana to sell water from state owned and financed reservoirs. "We can enter into contracts for both direct withdrawals and releases for downstream use, and the contracts are, by statute, limited to a maximum term of 50 years." He explained that the statutory 50-year contract limit was to accommodate bonds issued by the utilities to finance their facilities. By Indiana statute, the DNR must sell raw water for \$33 per one million gallons ("MG"), "which is pretty dirt cheap".

Hebenstreit noted that most contracts are on Brookville, Monroe, and Patoka Lakes. He said Brookville Lake has a firm yield of 82 million gallons per day ("MGD"). Currently, there are three contracts on Brookville Lake—two golf courses and the Franklin County rural water system. These contracts "only commit less than 1%" of the available supply." Monroe Lake has an available supply of 122 MGD storage with six contracts and is the "sole source" of water supply for the City of Bloomington. "This is really the reservoir that led to the source of the legislation." He explained there was a proposal to supply 80 MGD to the Indianapolis area, which would basically have tied up almost all of the supply for that reservoir between Indianapolis and Bloomington and basically locking Bloomington in with its current contract limit of 24 MGD. Hebenstreit noted that another contract on Monroe Lake is with IPL for release of water to augment stream flow at its Petersburg plant. IPL has had the contract for approximately 20 years, "has never used any water, but still pays approximately \$10,700 every year" to the DNR.

Hebenstreit said for "any contract for water supply, the entity" purchasing the water "would have to construct treatment facilities." David Lupke asked whether Bloomington was selling treated water, filtered water or raw water. Hebenstreit answered that

Bloomington withdraws the raw water, treats the water, and then distributes treated water to its customers, with the Town of Nashville being the only contract outside Monroe County.

Hebenstreit said that on Patoka Lake the state can sell up to 78 MGD, with approximately 21% of that supply currently committed. The only contract on Patoka Lake is with Patoka Lake Regional Water and Sewer District for 20 MG. The District uses water from Patoka, treats it, and sells the treated water to smaller communities. “We believe that [the District’s] service extends to a minimum of eight to nine counties.” He noted that Hardy Lake was built in 1960s, and it is totally state owned. Hardy Lake supplies water for release to the Stucker Fork Conservancy District, a rural water supply system.

Hebenstreit explained that the 2007 statutory amendments govern new contracts and contract renewals. Prior to the new statute, the Division of Water’s contract process did not include a provision for public input. The new statute requires a public meeting to be held in all affected counties, and it “charges the Advisory Council, or gives the Council the ability” to conduct the meetings.

John Bassemier asked, “How do you determine the value of water? Do you look at other states, how much is consumed, or how much is available?” Hebenstreit explained that the statute sets the amount at \$33 per million gallons. “The rates were set based on the state trying to get a return of its investment” with a five-year rate review adjustment for inflation. He said that with the 1970s and 1980s inflation rate, the five-year inflation adjustment would have priced water at a level that would have been cost prohibitive for city governments. “With that, we have evolved to the set amount of \$33 MGD, which was a compromise” between the existing contract rates. Hebenstreit noted that other states charge as much as \$150 per MGD. David Lupke characterized the Indiana statutory rate as being “ridiculously low.” Hebenstreit agreed. Lupke then said, “It also sends communities the wrong message by saying, ‘Water doesn’t have much value.’ From all the news from around the rest of the country, we should realize that water does have a tremendous amount of value.”

Hebenstreit said, “For years, we have had plenty of water that was not committed. The proposal by the Indianapolis Water Company to use Monroe Reservoir, I think, sent a signal to everybody that, ‘maybe, water is a little more valuable.’” Lupke asked whether any of the reservoirs were “running at capacity”. Hebenstreit replied that no reservoir is 100% committed. “21% of Monroe is committed out of its total.”

Lupke then asked, “Has there been any calculation of the environmental or ecological needs?” Hebenstreit explained that the original contracts between the federal government and Indiana recognized the reservoirs as being for flood control and water supply, and they do not mention recreation or the environment. “Each reservoir has a couple of different purposes, but some of them actually have contracts to use the water to release downstream for water quality purposes, but nothing says we have to evaluate the environmental impacts on the reservoir itself.” Lupke asked, “Or the downstream impacts?” Hebenstreit said, “No. There is a minimum release on each reservoir, but all

those numbers were developed in the 60s, so I don't know if they are necessarily adequate."

The Chair inquired of the underlying purpose of the new legislation. "The legislators who sponsored the bill, what were they trying to keep from happening, or what were they trying to control?" Hebenstreit answered, "I think the legislators were trying to make sure that, say, Bloomington had a voice if the supply capability of the reservoir was going to be maxed out." The Chair asked if he understood correctly that Monroe Lake was not at capacity, but the proposed contract with Indianapolis "would have put the reservoir at capacity". Hebenstreit answered, "That is correct." The Chair said, "So, what the legislation calls for is for there to be a public hearing." Lucas responded that the legislation requires "several" public meetings, one for each affected county.

William Wert asked, "Is there a sense in the municipalities that continued growth obviously demands more water? At some point, we do not have any more water to commit to them." Hebenstreit said, "I think that is an issue that is lost on most people right now, because, I think, Indiana has been looked at as a state with all the water we need." Wert said, "I know, but in other states it is an issue." Lupke said that some areas of Indianapolis "could get there with the growth." Hebenstreit reflected that 20 years ago the economic feasibility of piping water from Monroe Lake to Indianapolis would have been questioned. With the draft proposal from Indianapolis, and the response from Bloomington, the need to view feasibility must be considered in a larger geographic context. He then deferred to Steve Lucas to outline procedural aspects of the 2007 statutory amendments.

Lucas explained that an early draft of the legislation would have required the Advisory Council to "conduct the public meetings." He noted that an amendment was made to the bill to allow the Advisory Council to "delegate the meeting authority to someone to conduct the meeting on its behalf." He said the authority for rule adoption under IC 14-25-2 "goes back to 1955, but Indiana has never had any rules based upon this authority, probably because there was a sense that we had all the water we needed." He said that the Division of Water has conducted analyses of water contracts on a case-by-case basis, but "there is not really a process in place. There's not a public process for review," and there are no published "evaluation standards."

Lucas said the legislation was "given an emergency clause so it went into effect immediately. We do not have any standards, and the standards need to be by rule. We can't do a permanent rule" quickly enough to address immediate needs, "although the Director can do a temporary rule that can be put in place pretty quickly." Lucas said that the rule "ultimately" will need to have "substantive parts". He said the proposal contained in the Advisory Council's packet is a "rule in progress. You usually do not see rules in such a crude form. What we are looking to accomplish is if this Council would give its blessing to a process, and then if the Director saw fit, he could adopt a temporary rule." Lucas said a proposed permanent rule would be brought back to the Advisory Council at a later date, and this proposal would include substance as well as process.

Lucas then focused his discussion upon proposed 312 IAC 6.3-3-3 that would govern the requisite public meetings. He said the proposal would delegate authority to the Director of the Division of Water to “assign someone, probably someone from the Division of Water, although the Division Director could appoint another DNR employee” to conduct the public meetings. “It might make sense in some situations to appoint someone from the Office of Legal Counsel.” He explained that the person delegated would hold the public meeting as described in the proposed rule. The public meeting structure is statutory, but the process is “really wide-open to what you are going to evaluate.” The public meeting would be informal and would not be an evidentiary hearing. “There will be flexibility.” The proposed rule would also provide that the hearing officer could maintain a record but would not be required to prepare a transcript. What the hearing officer does “if taking notes, or recording the meeting, would be the official record.”

Donald Van Meter noted that 312 IAC 6.3-3-3(d) states that the hearing officer “may” maintain a record. “There has to be some kind of record.” He suggested replacing “may” with “shall”. Van Meter added that the hearing officer would still have flexibility because the proposed rule still would not “dictate the kind of record.” Lucas said, “That’s a good comment,” and he reflected the draft could be modified accordingly if it were the will of the Advisory Council. The members who were present expressed concurrence with Van Meter’s modification, and Lucas indicated the modification would be incorporated.

Lucas said that 312 IAC 6.3-3-4 sets forth the duties of the Advisory Council. “The Advisory Council is a critical cog in the machine. You would need to review what the hearing officer recommends.” Lupke commented, “I think there could be some discretion on the part of, perhaps the Chair.” If the Chair were to decide “it’s a non-controversial situation, delegation would make a lot of sense. In the case that there might be controversy, the Chair could say ‘we need the entire Council, or as many as possible present for the meetings.’” Lucas responded, “You can certainly do that. That’s your prerogative.” Lupke asked, “Is it under the Advisory Council’s discretion?” Lucas responded, “It’s the Council’s public meeting.”

Patrick Early reflected that, pursuant to the proposed rule, the Advisory Council “would, in essence, assign a proxy.” Lucas added that the proposed rule could be modified to give authority to the Chair, rather than the Director of the Division of Water, to make the appointment of hearing officer. Requiring the Chair to make this appointment “probably would be a burden sometimes,” although he believed doing so would be lawful.

The Chair said, “We would sometimes be able to predict where there is going to be a lot of contention. But, I think, being consistent and doing it the same way so that the hearing officer goes to every single meeting,” would result in greater predictability. In either approach, “the hearing officer has to come back to us so the Advisory Council would have fulfilled our obligation with the hearing going to all those individual counties.” Having the Director of the Division of Water select the hearing officer, particularly where as many as eight or nine public meetings might be required, could be implemented more efficiently.

Lucas said, “That was the way we envisioned it, but it is your call.” Pursuant to the rule proposal, the Advisory Council would still “look at the summary presented by the hearing officer, and would consider recommendations from the division that manages the reservoir, recommendations from a federal, state, or local agency with expertise regarding water usage and supply, and then any information received at the Advisory Council meeting to which the report was presented.” The Council members present ultimately determined to approve the delegation of appointment by the Director of the Division of Water as set forth in the proposal.

Lucas noted that, by statute, the Advisory Council would submit a summary and recommendation to the Commission not later than 30 days from the date of the public meeting. “That’s a pretty narrow window considering how things function.” He said the proposed rule would put a fine point on this requirement by reflecting the 30-day time limit would, where multiple public hearings were conducted, be measured from the final public meeting. Van Meter reflected that this approach was logical.

Lucas said, “What we would be looking for is your informal blessing. The Council doesn’t have a quorum, but at least in the short term, it is the Director’s prerogative on an emergency rule. You would be making a suggestion to the Director. Later on, you will be making a recommendation to the Commission” with respect to preliminary adoption of a permanent rule. He also referenced several clerical errors to be corrected from the distributed draft.

Bill Pippenger inquired whether “20 days” under 312 IAC 6.3-3-5(d) could be amended to read “20 working days or 20 business days.” Lucas indicated that section (d) is a restatement of statute. “That would be a good idea, if we could do it.” Unfortunately, the Commission did not have discretion to modify this subsection.

Pippenger asked whether an “inflation clause or escalator clause” could be added to the rule proposal. Lucas said he deferred to Jim Hebenstreit, but “I think the price is locked in” by statute at \$33 per MG. Hebenstreit confirmed this perspective.

Chairman Early observed a quorum was not present. The Advisory Council could not take official action, but the individual members could offer a statement of consensus to the DNR Director for the preparation of a temporary rule. The members present then expressed a unanimous consensus that the draft procedural elements of the rule proposal be recommended to Director Carter for a temporary rule. The draft was recommended as presented but with the correction of referenced clerical errors and with the substitution of “shall” for “may” in proposed 312 IAC 6.3-3-3(d).

Consideration of request for recommendation for approval of the conveyance of Pigeon Roost Memorial Site to Scott County for use as a county park

Laura Minzes from the Division of Indiana State Museum and Historic sites presented this item. She explained that proposed is the conveyance of Pigeon Roost Memorial Site to Scott County to be used as a county park. Minzes provided Council members with copies of two letters from the Scott County Visitors Commission. She explained that the Visitors Commission, in its April 2007 letter, expressed interest in receiving the historic site. Minzes indicated that the Division of Indiana State Museum and Historic Sites had been “working toward” conveyance of the property to Scott County, “but were turned away for lack of public support. This time [Scott County] came to us.” Minzes said that the Division is “looking forward” to working with Scott County “even if the conveyance eventually goes through.” She noted that the second letter from the Visitors Commission sets forth the “long range plans” for the site.

Minzes explained the Pigeon Roost Memorial Site is basically an “unmanned park” between Scottsburg and Henryville just east of US 31. “It is literally right off the highway; however, you would miss it if you weren’t looking for it, because there is a railroad, and between the railroad and the highway it is substantially overgrown with brush so you don’t see it.” Minzes indicated that the site becomes an attraction for illicit activities. She also explained that the memorial site is under the governance of the Division of Indiana State Museum and Historic Sites, but in the past it was under authority of several other DNR divisions.

William Pippenger noted that the support materials for this item indicate that the property commemorates the “French and Indian War, a.k.a. the War of 1812”. They were about 80 years apart. Which war was it?” Minzes apologized for the error and indicated the site commemorates the War of 1812.

David Lupke indicated that he was “completely supportive” of the conveyance of the memorial site, but asked, “What mechanism do we have in place to enforce the covenants and make sure the property is maintained by the county and the local group?” Minzes explained that, as with other surplus properties, the DNR has conservation easements that require an annual inspection. “Luckily, we do not have a lot of structures here.” She noted that the Department does not own the property where the monument is located. “The portion where the monument is was purchased by Scott County in 1903, but never transferred to the State.” Minzes said the parcels around the monument are proposed to be conveyed to Scott County. She explained that the cemetery on the site would be covered by the various cemetery laws.

The Chair asked Stephen Lucas for clarification as to the Advisory Council’s required action. Minzes said that a recommendation would need to be presented for consideration of the Natural Resources Commission. She added, “the Division Board of Trustees will meet tomorrow to consider the proposed conveyance. We anticipate [the Trustees] approval” with full consideration by the Natural Resources Commission at its July meeting.

The Chair noted that because a quorum was not present, “I don’t think we can have an official motion.” He asked, “if we can have a unanimous consent that all of the members

in attendance recommend that this be moved forwarded to the Commission.” All members present answered in the affirmative. No member voiced opposition to the proposed conveyance of Pigeon Roost Memorial Site to Scott County for use as a county park.

Second consideration of tendered project regarding riparian zones in public waters; Administrative Cause No. 07-045A

Stephen Lucas, Director of the Natural Resources Commission’s Division of Hearings, presented this item. He indicated that the Advisory Council had a “very good” discussion of the subject matter at its last meeting. “You didn’t get to a specific resolution as to how you wanted to go forward.”

Lucas then summarized the prior discussion of the topic. He said there is a “growing issue” on public freshwater lakes, which are mostly within the northern two tiers of counties, where “we have a lot more competition as among riparian owners and the general public for the usage of the shoreline.” He indicated that this issue also has direct application to all navigable waters, and there has been recent interest in the issue for navigable waters as well as for public freshwater lakes. David Lupke said, “I would say that it is much more than just the two counties.”

Lucas explained that a mechanism is being sought that “we could communicate better within the Department and to the public as to how we were addressing conflicts in specific contexts.” He indicated that the Overview before the Council members contains several different cases where resolution has been rendered that include maps for illustration. “Right now, if persons have a conflict, they can look to the Natural Resources Commission’s online database, CADDNAR.” Lucas noted that the decisions in CADDNAR have legal, precedential value. “There are a couple of reported decisions by the Court of Appeals, but mostly they are CADDNAR decisions.” One option would be “to stay with the way we do it now. If a person wanted to track down” a decision, the person would conduct an online database search on CADDNAR.

Lucas said a second option would be the development of a guidance document that would not have force and effect of law, “but would attempt to synthesize [the reported and CADDNAR decisions] into something that the Advisory Council and the Commission gave their blessings to, which we would update periodically.” The adoption of rules to address the issues would be the third option, the fourth option would be to recommend legislation, and a fifth option would be some combination of the previous four options.

Lucas said the resolution of riparian rights is a subject that “might not resonate with everybody,” but the discussion during the prior Advisory Council meeting suggested considerable interest with some members. He said one approach for moving forward might be that a “volunteer committee” be formed that would work give instruction and advice to the NRC Division of Hearings, the Division of Water and the Division of Law Enforcement as to how to draft a document. Lucas said his sense from discussions at the

last meeting “was that a guidance document, a nonrule policy document, was the best approach.”

The Chair asked whether it was the Department’s and the Commission’s view that a nonrule policy document is “the best course of action, because you are the ones that are going to have to deal with it. What works best or what is the most practical solution?” Lucas answered, “I would like to see us do more than what we are doing currently. CADDNAR is better than nothing, but it is not a very good solution.”

David Lupke said, “As I recall it, we are going from nothing, or very little, to providing a guidance document. That would almost have to be the first step anyway before you could go to a rule process.” He said the nonrule policy document could be “field tested” and then “we may have to fine tune it or go through a rule process. This would be the logical first step.”

Chairman Early asked Lucas, “You would see [drafting the nonrule policy document] as a joint venture between a Committee of this Council” and the Division of Hearings? Lucas responded that the Division of Hearings could be a “point of contact”, but the affected DNR Divisions should also participate.

The Chair noted that Lupke was familiar with the issues, and he asked if Lupke would serve as Committee Chair. Lupke responded, “Absolutely.” Early asked whether other Council members would like to assist. Van Meter responded that he would be interested. The Chair then appointed Van Meter as a Committee member, and he added that if a member not present today “feels like they would like to get involved, we could do that.”

Van Meter said, “This problem is only going to get worse.” Lupke added, “There is so much pressure on these lakes now. With the development pressure and everything else, it’s just going to get worse.”

Pippenger asked whether the Lake Management Work Group had addressed the issue. Lucas said the Work Group is working on “a lot of different issues. It’s conceivable that they might wade into this particular issue, but there is so much on their plate, that I would be a little bit surprised.” Hebenstreit reflected that the issue is “so complex”. He said a draft document could be provided to the Work Group for additional input. “If we did a rule right at the get go, based on what I have seen, we would start finding holes in it day one.”

The Chair asked the Council “Is everyone okay with that resolution?” The members present answered collectively in the affirmative.

Next Meeting

The Chair announced that the Council’s next meeting is scheduled for 10:30 a.m., EDT, on August 15 “during the State Fair. We are trying to put together a program that will

involve what all our facilities are out at the State Fair. We will be able to go through our exhibits there.”

Adjournment

The Chair adjourned the meeting at 11:42 p.m., EDT.

AGENDA ITEM #3

Consideration of a rule proposal to extend the dog running season for raccoons and opossums to start at noon on January 31 and extend through November 7 of each year, adding an additional 40 nights to the current season.

The proposed extension would set the dog running season to start immediately after the close of the hunting season and end just prior to the start of the hunting season for raccoons and opossums. There is currently no biological need to limit the number of days for the dog running season due to the high population of raccoons. The DNR has been asked by raccoon hunters to extend the running season if possible.

Attachment: Information submitted by the Hoosier Tree Dog Alliance

AGENDA ITEM #3

Attention Hoosier Sportsmen!

As you know, there are many species of wild game being hunted and pursued with the aid of sporting dogs in our great state of Indiana; rabbit, squirrel, pheasant, quail, duck, geese, grouse, coyote, fox, raccoon and opossum. Under current Indiana law, a Hoosier Sportsman may hunt and train their beagle, treeing cur, pointer, retriever or running hound, 24/7-365 days per year so long as they are not taking game during the off season. The same holds true for owners, handlers and trainers of dogs utilized in non-hunting activities, such as; Conformation, Tracking, Lure Coursing, Obedience, Herding, Agility, Earth-Dog and Rally. On the other hand, owners, trainers and handlers of Raccoon Hounds are not as fortunate, they are restricted to “taking season” and the antiquated “running season” in which to work, train and exercise their hounds.

There are two (2) separate components of the annual shut down of the Indiana Coonhound running season. The first shutdown segment is immediately following the raccoon taking season in February and the second part is immediately prior to taking season in October and November. These two (2) shut down periods constitute forty (40) days/nights per year in which the Hoosier Houndsmen may not turn their dog loose. This matter has been discussed with Department Heads of the Fish & Wildlife and Law Enforcement Divisions of the IDNR in January of 2007; they concurred there were no solid biological or enforcement rationale to keep these two unnecessary shutdown periods intact.

There are many good, solid reasons why Hoosier Houndsmen desire and merit unrestricted training of their hounds. On the flip side, we know from experience that when there is a DNR rule modification proposed someone will oppose the change, even if it does not affect them positively or negatively in the least way. Sometimes this opposition may come from a position of wanting political leverage on their group’s next big issue. Other times resistance could come from basic human nature, fear of change, envy and/or lack of knowledge about the subject at hand. Below is a listing of these advantages to the Houndsmen and the apprehensions being voiced by a few others concerning this proposal along with the hard facts surrounding this proposal.

Advantages for the Houndsmen:

- To earn the same year-round rights and freedoms to hunt and train our hounds 24/7, 365 days per year that all other sporting and companion dog owners of Indiana benefit from every day, thus providing a level playing field for all
- To create the opportunity to spend 40 more days and nights enjoying our great Indiana Natural Resources
- To create the opportunity for 40 more days and nights to spend with our loyal canine companions; giving them needed attention, training and exercise
- To give our children and grand children additional opportunity to experience the Tree Dog Sports, to commune with nature, now and in the future
- We all need more reasons to be in our great outdoors getting exercise with our families Vs spending more idle time in front of the television set

AGENDA ITEM #3

Concerns of other sporting groups:

- Concern this change could somehow affect the access or ability of trappers to catch furbearers during this revised Coonhound running period
- Concern this change could somehow affect the movement of the deer herd, negatively affecting deer hunter success during this revised Coonhound running period

Facts about this proposal:

- During the current 40 days/nights shutdown to Coonhounds, all other sporting dogs and free roaming farm/companion dogs of Indiana have 24/7 access to Indiana's public and private lands, so very little will actually change as far as additional dogs in the woods are concerned
- During the current 40 days/nights of shutdown, Coonhounds are presently being free cast in licensed competitive events under IDNR permits every night of the week, except Sunday, so very little will actually change as far as additional Coonhounds in the woods
- If these two shut down periods were to open up, obviously not every Coonhunter would take advantage of every opportunity each night, but the option would be there if they chose to take advantage of it
- There have been many scientific studies and experiments conducted as to the effects (or lack thereof) of hound hunting on movements of Whitetail Deer relating to hunter success
- The most comprehensive study of the effects of hounds on Whitetail Deer was conducted by the South Carolina Department of Natural Resources in conjunction with Department of Agriculture, Fisheries and Wildlife at Clemson University, Clemson, SC and Westvaco Corporation:
<http://www.dnr.sc.gov/wildlife/publications/pdf/raccoonimpact.pdf> Please take the time to read and understand this convincing report.
- These scientific studies have proven without a doubt that Coonhunting has no positive or negative influence upon deer hunter success
- As a side note there was simultaneous data collected on the movement of Wild Turkey during some of these studies, again with no positive or negative effect on Turkey hunting success
- Based upon the bullet points listed above, the effects of this change on Hoosier Trappers, Deer Hunters and other Indiana Sportsmen would be minuscule and ultimately barely discernible

Bottom line:

- We can find no logical reason for not permitting every Hoosier Sporting Dog owner, regardless of the breed or game pursued, to have the same opportunity to enjoy our magnificent Indiana Outdoor resource, can you?

AGENDA ITEM #4

A recent AOPA decision suggested that we needed to draft a rule that drew a brighter line of distinction between a group pier and a marina. We propose the following change to 312 IAC 11-2-12 for that purpose and would like to take this item to the September NRC meeting.

312 IAC 11-2-12 “Marina” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 12 "Marina" means a structure that:

- (1) can service simultaneously at least (5) water craft; and
- (2) provides, for a fee, ~~one (1)~~ **two (2)** or more of the following:
 - (A) Watercraft engine fuel.
 - (B) Docks.
 - (C) Watercraft repair.
 - (D) Watercraft Sales or rental.

(Natural Resources Commission; 312 IAC 11-2-12; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

Beyond that, recent changes to the general license provisions of 312 IAC 11-3-1 made group piers no longer eligible for the general license and hence a specific license is required for a group pier. We would like to discuss possible criteria or standards for evaluating group pier license applications. One simple proposal drawing from what we understand to be part of Illinois requirements, would be a limitation on the lateral extensions (T's s L's) from group piers. As a starting point we would suggest 50' of 50% of the riparian lake frontage, which ever is less. This, in a simple way, begins to address the issue of the appearance of restricting access from the open lake to shoreline areas on public lakes.